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## THE INTERSTATE COMMERCE COMMISSION AND THE RAILROADS

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No problem more important and difficult confronts the people of the United States than that of establishing between their governments and their large business concerns relations which will promote greater equality in the distribution of the burdens and benefits of the production of wealth, without impairing the efficiency with which production is conducted. There has been within recent years a great increase in the amount of government regulation of business. Its main purpose has been to equalize economic burdens and benefits. The most important experiment being made in this field is in the control of railroads. This experiment is so important partly because the railway industry is one of the largest in the country. It is so important partly, also, because there is a tendency for large classes of commercial and industrial enterprises to pass mainly into the hands of a comparatively few large aggregations of capital. This tendency, if continued, will give quasi-monopolistic power to a few concerns in these other fields. There will then be as much reason for subjecting them to strict regulation as for subjecting railways to it. The policy applied to them probably would be modeled on that applied to railways, having alike its strength and its weaknesses. Therefore, the wisdom or folly of our regulation of railways may determine the wisdom or folly of our regulation of other classes of concerns and the success or failure of government control of business in many fields.

The system of regulation adopted for railways consists partly of the passage of laws imposing on them specific and detailed requirements, but mainly of the delegation of authority over them to commissions. The Interstate Commerce Commission is the most important body to which such authority has been given. Therefore, the success or failure of government regulation of railways, and even of public regulation of business in general, will be determined largely by the amount and nature of the power given to the commission

and by the courage and wisdom with which it is exercised. An adequate study of its authority, of the way it is doing its work, of the results being produced, and of the changes, if any, which ought to be made in the laws defining its authority and duties, or in the policy which it is following, would occupy an important place in an investigation and discussion of the relations between our governments and our commerce and industry. Limitations of space forbid, however, the presentation in this article of more than an outline of the points that should be covered in a comprehensive discussion of the relations between the commission and the railways.

### *Some Results of Regulation*

Regulation of the railways by the federal government began with the passage of the Act to Regulate Commerce in 1887. Their regulation by the states began with the Granger movement more than a decade earlier, and in some states has been effective and even drastic most of the time since. But effective regulation throughout the country, both national and state, did not begin until 1906, when the Hepburn rate act was passed. It has, therefore, had a life of less than ten years.

As a preliminary to analysis and discussion of the policy followed since 1906, it is desirable to take a general survey of the trend of affairs in the railway industry during this time. It is easy to show that regulation in general, since it became effective, has accomplished much good. It has destroyed the railways' domination of politics. It has abolished the issuance of free passes except to certain classes of persons who are expressly authorized by law to use them. It has extirpated rebating and greatly reduced unfair discriminations in the published rates. It has caused the adoption of a uniform system of accounting which has made it more difficult for those in charge of the management of railways to evade public control or deceive or overreach their stockholders. It has given so much publicity to the mismanagement, financial and otherwise, of certain roads as to render such mismanagement more difficult and improbable in future. This is but a partial list of the good results it has achieved.

At the same time, regulation has produced, or contributed toward producing, other effects more questionable. In the decade before 1906, without there being any considerable advances in av-

verage freight and passenger rates, the earnings of the railways increased more rapidly than their operating expenses and taxes. There were, in consequence, large increases in their net income, which enabled them to recover from the effects of the panic of 1893 and of the depression which followed it; and a large amount of new mileage was built and unprecedented numbers of locomotives and cars were bought.

On the other hand, during the period since 1906, despite great improvements in machinery and methods of operation, the expenses and taxes of the railways have increased faster than their total earnings. They have found it necessary year by year to make large additions to their investment in property per mile of line. This coincidence of increasing investment and declining net revenue has caused a serious reduction in the percentage of return earned. In the fiscal year ended June 30, 1914, the last year for which we have complete figures, the investment in road and equipment per mile of line was \$71,551, an increase since 1906 of \$11,927. Gross earnings per mile were \$12,667, an increase of \$2,207, or 21 per cent. Operating expenses and taxes were \$9,794, an increase of \$2,546, or 35 per cent. In consequence, net operating income per mile was only \$2,873, or \$339 less than in 1906, a reduction of  $10\frac{1}{2}$  per cent. To summarize, the investment per mile was \$11,927 more in 1914 than eight years before, but the net money per mile available with which to pay a return on it was \$339 less. In 1906 the percentage of net return on property investment was 5.39 per cent; in 1914, only 3.99 per cent.

This decline in net return has rendered it increasingly difficult to pay interest and dividends and raise new capital. Many roads have become bankrupt and on October 1, 1915, 42,000 miles of line were in the hands of receivers. This is the largest mileage of insolvent roads ever known. The construction of new mileage under way is less than at any time in fifty years. Until lately the orders placed for equipment and supplies were at their lowest ebb. These conditions threw hundreds of thousands of the workmen of the railways and of railway supply and equipment manufacturing concerns out of employment.

The increase in the outgo of the railways between 1906 and 1914 was due chiefly to two causes. The average wage per employee advanced from \$611 to \$810, or 32.57 per cent. The taxes per mile

advanced from \$336 to \$568, or 69 per cent. The increases in taxes were, of course, made by public authorities. A large majority of the advances in wages were awarded by arbitration boards organized under the federal Erdman act. There have been other, although smaller, increases in expenses which have been more directly due to state and federal regulation. The railways have tried to make general advances in rates to offset, at least partially, these increases in their outgo. The regulating authorities, national and state, have prevented most of these and have caused many reductions in both passenger and freight rates, and the average passenger and freight rates are lower now than in 1906, despite the great increases which have occurred in wages, taxes and other expenses.

On this showing the heavy reduction in the net return of the railways and the effects which it has produced must be attributed mainly to government regulation. As the Interstate Commerce commission is the most important regulating body, many people give it the credit or blame, commending it if they regard the general result produced as good and condemning it if they consider it bad. It is probable that a majority of business men and students of economic and industrial affairs believe the reduction of railway net earnings has been unjustified and has had a bad effect on business generally. Therefore, among these classes the Interstate Commerce Commission is a less popular and more criticized body than a few years ago.

But much of the criticism visited on it is misdirected. The commission is often called the most powerful governmental body in the United States. In a sense, it is so. It has large authority over the railway industry, which involves the possession of great power to affect the national welfare. But an examination of the laws and court decisions under which the commission acts shows that its authority, while great, is fragmentary and subject to many limitations; that it is more negative than positive; that it is such that the harm which the commission can do if disposed to be unfair is greater than the good it can do if disposed to be fair. Before judgment is passed on the commission's work, the nature and limitations of its authority should be carefully considered.

#### *Piecemeal Development of Public Control*

In theory, regulation should, and in practice in this country it does, relate to the financing of railways; to their construction,

maintenance and operation; to their accounting; and to their rate-making. As financing must precede construction, and as construction, maintenance and operation must precede accounting and rate-making, logically, regulation should be applied to these features of the business in the order they are named. In France, where logic usually counts for more and opportunism for less in public affairs than in English-speaking countries, this is almost exactly what was done. But in the United States, and much the same thing is true in England, regulation has been applied to one, and then to another, part of the business as there have come to the notice of the public and its representatives real or supposed abuses which have seemed to require correction.

How our system of regulation has grown up is illustrated by the way in which from time to time its powers have been conferred on the Interstate Commerce Commission. As already stated, the act to regulate commerce went into effect in 1887. There had been prolonged, widespread and well-founded complaints of rebating and other forms of unfair discrimination in rates, and the law was passed mainly to abolish these practices. It prohibited rebating and other forms of unfair discrimination, and forbade rates to exceed reasonable maxima. There was apprehension lest the pools of traffic and earnings which had been formed by various groups of competing lines would cause rates to be made and kept excessive, and therefore pooling also was prohibited. The Interstate Commerce Commission was created to enforce these provisions. It understood it was authorized to prescribe and put into effect maximum reasonable rates; but the Supreme Court of the United States held otherwise.

During the twenty years following the creation of the commission the question of rates, and especially the rebating phase of it, continued to absorb public attention; and regulation, state and national, dealt mainly with this question. Several minor amendments to the Interstate Commerce law, all dealing with rate matters, were passed, and in 1903 the Elkins law was enacted, strengthening the provisions against rebating. In 1906 was passed the Hepburn act, specifically authorizing the commission, when it found rates unreasonable, to fix maximum reasonable rates. In 1910 was passed the Mann-Elkins law, empowering the commission to suspend advances in rates pending investigation of them and to pro-

hibit them if found unreasonable. Meantime, in 1890, there had been enacted the Sherman Anti-Trust law. Originally assumed to have no application to railways, this law was soon construed by the courts to prohibit all agreements and combinations between competing carriers.

Gradually the attention of the public and its representatives began to be directed toward other phases of the railway business. The Hepburn act authorized the Interstate Commerce Commission to prescribe a uniform system of accounting. This the commission did, and many states followed its example.

As early as 1893 Congress had begun the physical regulation of railways by passing the Safety Appliance acts, requiring the use of power brakes and automatic couplers. The Erdman law of 1898, providing a scheme of conciliation and arbitration of disputes between railways and their employees in train service, was intended as a regulation of operation, its principal purpose being to prevent interruptions of service by strikes. After being long ignored, this statute, now in amended and strengthened form known as the Newlands act, has in recent years often been resorted to with important results.

Within the last ten years, federal laws affecting the physical equipment and operation of railways have followed each other in rapid succession. In 1907 an act was passed limiting the hours of service of railway employees. In 1908 the kind of ashpans to be used on locomotives was prescribed. In 1909 the transportation of explosives was dealt with. In 1910 the present Employers' Liability act applying to interstate carriers, was enacted, and provisions were adopted affecting all safety appliances used on locomotives and cars. Still later there was passed an act for the inspection of locomotive boilers, which, at the last session of Congress, was made to cover the entire locomotive. The Interstate Commerce Commission has nothing to do with the arbitration of labor disputes, but is required to administer and enforce most of the federal laws affecting operation.

The example set by Congress during the last ten years in passing laws relating to physical equipment and operation has not only been followed but greatly surpassed by most of the states. During the last five years the states have adopted no less than 442 laws relating merely to the physical operation of railways; and in numer-

ous cases the legislatures and commissions have regulated features of the business which Congress has not touched or authorized the Interstate Commerce Commission to deal with.

#### *Limitations on the Commission's Authority*

The foregoing shows that, as already has been stated, the Interstate Commerce Commission's power is fragmentary. Its authority even over the phases of the railway business with which it does deal is restricted in various ways. Its authority over rates is great, but far from unlimited. The extent of its power over state rates is unsettled. In the Shreveport case it was held that, if a state rate prescribed by a state authority was so low compared with a related interstate rate as to be unfairly discriminatory against interstate commerce, the Commission could compel the railways to remove the discrimination even though this involved the advance of the state rate. But it is conceivable that a state rate fixed by a state commission or legislature may be too low as compared with interstate rates approved by the Interstate Commerce Commission, and yet not be so related to the interstate rates as to work directly, at least, an unfair discrimination. What control, in that case, can the Commission exercise over the state rate? The courts will not interfere with either interstate or state rates merely because they are low unless they are actually confiscatory. How much it may be reasonable and expedient for rates to be kept above the line of confiscation is a question of public policy to be determined by law-making bodies and commissions. Suppose, now, that the courts should hold that rates which would yield a return of 6 per cent on a fair valuation barely avoided confiscation and that state authorities should then fix rates which would yield only 6 per cent on state traffic, but that the Interstate Commerce Commission should believe a more liberal policy was desirable, in order to induce sufficient investment in railways, and should allow rates which would yield 7 or 8 per cent. This is practically what is really being done in many cases, except that the rates of return allowed to be earned do not average as much as those mentioned. There are many instances where state legislatures and commissions are enforcing lower passenger and freight rates than the federal commission is allowing to be charged on interstate traffic in the same states.

In its decision in the last western rate advance case the Inter-

state Commerce Commission refused to permit increases in certain interstate freight rates, not because they would not be reasonable in themselves, but because the interstate rates already being applied were higher than the corresponding state rates. The attorneys for the railways contend that it was within the competence of the federal commission, first, to fix reasonable interstate rates, and then to require the state authorities to permit the collection of corresponding state rates. Does the failure of the Interstate Commerce Commission to adopt this course indicate a belief that it lacks the necessary authority? If it does lack the authority in such cases to bring state rates into line with interstate its power to prevent unfair discriminations against interstate commerce and to carry out a fair policy of regulation is limited in a very important respect.

The commission's authority over even interstate rates is restricted in a vital particular. Many state commissions may fix the absolute rates which must be charged, and the railways can neither advance nor reduce them. The Interstate Commerce Commission may prescribe reasonable *maximum* rates and prohibit unreasonable *advances*, but it cannot fix reasonable *minimum* rates or prevent unreasonable *reductions*. Suppose the commission prescribes for a certain territory a schedule of rates which it holds to be reasonable and non-discriminatory. All the railways in the territory but one may accept it. This one may choose to make a reduction at one point which will cause an unfair discrimination. The commission, in such a case, is powerless to prevent the reduction and the consequent discrimination. Suppose, again, that the railways in a territory show they are not deriving from all their rates enough net revenues to enable them to serve the public properly. At the same time they suggest advances in the rates on certain commodities. The commission may believe that the needed revenues should be secured by increasing the rates on a different group of commodities; but it cannot deal fairly or adequately with the situation because, while it can refuse the advances for which the railways ask, it cannot cause the advances which it thinks ought to be made.

The competition between the railways in making rates often becomes so excessive as to result in unfair discriminations. Existing laws prohibit agreements or arrangements between them to limit competition in interstate commerce. If the pooling of traffic or of earnings were allowed, as is done in almost every other country,

roads which desire to keep rates reasonable and non-discriminatory could offer inducements to their rivals to do so. But pooling is prohibited by the Act to Regulate Commerce, and other kinds of agreements and arrangements limiting competition are prohibited by the Sherman law. In many cases it would help the Interstate Commerce Commission in its regulation of rates if groups of railways would enter into pooling or other arrangements to restrict competition and prevent discriminations; but the commission cannot even authorize, much less require, them to do so.

The commission's authority over the way railways shall be constructed, maintained and operated is much more limited than its authority over rate-making. In numerous states the commissions, by general provisions of law, have been given extensive discretionary control over the physical management of railways. In some states, by declining to issue "certificates of public convenience," they can even prevent new lines from being built at all. In many they can order the construction and control the location of passenger and freight stations, prescribe the headlights that shall be used, require the installation of block signals, and regulate the furnishing of freight cars and the schedules of passenger trains. The authority over physical management given to such commissions is, as already shown, supplemented by hundreds of state laws regulating details of construction, maintenance and operation. On the other hand, the legislation enacted by Congress regarding physical management and operation is of a piecemeal nature. While the Interstate Commerce Commission prescribes the safety appliances used on locomotives and cars, it has nothing to say about block signals. It inspects and regulates locomotive boilers, but has no authority to regulate roadway and track. It may require the establishment of satisfactory through routes, but cannot interfere with an attempt by a lockout or a strike to interrupt transportation and close all routes. It has no part in the settlement of labor disputes, which may have the greatest influence on the kind of service that will be rendered and on the cost of rendering it. When state legislatures and commissions, in the nominal regulation of state commerce, impose on the railways requirements as to headlights, train crews and clearances, which affect interstate more than state commerce, the Interstate Commerce Commission cannot interfere; it has no authority over such matters.

Comparatively limited as is the commission's power over the physical management of railways, its authority over their financial management is still more restricted. Practically all railways are engaged in interstate commerce. Investors in them are scattered throughout the country. Yet, while many states regulate the issuance of railway securities, the Interstate Commerce Commission is without authority over this part of the railway business.

The facts presented in the foregoing portray an anomalous situation. The railway question is emphatically a national one. Most railways operate in more than one state and many lines in six, eight or a dozen. A vast majority of the traffic handled is interstate. There is no state in which the state traffic approaches the interstate in amount, and in some the interstate traffic is 90 per cent or more of the total. The Constitution, by repeated interpretations of the courts, makes the federal authority to regulate interstate commerce paramount to the state authority to regulate state commerce. The desirability of the assertion and exercise by the federal government of its paramount authority over commerce usually is recognized by the public with great promptness and clearness. Nobody would seriously consider a proposal to let each state deal separately with the tariff question, imposing duties that would affect both interstate and foreign commerce. The federal government exercises exclusive authority in the regulation of commerce on navigable waterways. A few years ago Mr. William J. Bryan advocated the adoption of government ownership of railways, and suggested that the national government should operate the main lines and the states the branch lines. The storm of opposition and ridicule which greeted this proposal was due not only to strong public sentiment against government ownership, but to a general recognition of the fact that the railway question was distinctly a national one; that the doctrine of state's rights in its correct form had little to do with it; and that it was absurd to suggest the operation of parts of the railways by the federal government and parts by the states.

Yet, in regulating railways we are following the very kind of policy the pursuit of which in dealing with the tariff or in the public ownership and operation of railways we would consider undesirable and absurd. We have partially asserted the paramount authority of the federal government over railway transportation by passing a number of national laws and creating the Interstate Commerce

Commission to administer most of them. But, as has been shown, the national commission has not nearly as much authority over interstate transportation as many state commissions have over state transportation; and state legislatures are allowed to pass laws and state commissions to issue orders which purport to affect merely state transportation but which actually interfere with interstate regulation and have a greater total effect on commerce among the states than on commerce within the state.

*Comparative Effects of State and Federal Regulation*

The present system cannot be defended on the ground that state regulation gets better results than interstate regulation. The national government, and especially the work done by the Interstate Commerce Commission, deserves credit for most of what is unquestionably good that has been accomplished. On the other hand, most of the questionable or positively bad results of regulation cannot be attributed to the federal government.

The fact that it is necessary to discuss where the credit should be given and the blame placed for results points to one of the serious faults of the present policy. This is the division of the responsibility for it. Where responsibility is so much divided it is impossible to apportion with exact, or even substantial justice the credit and the blame for what is done. But the policies of most of the states have been of such a character and present so great a contrast to that of the national government, in many respects, that it is possible to mete out a rough kind of justice.

In a few states, among which Wisconsin ranks first, most of the regulatory legislation has been intelligently and fairly drafted; the members of the commissions have been chosen because of their special fitness, and have not allowed political or other improper influences to control them; and regulation has, in consequence, been fair and beneficial to both the railways and the public. But as to most states the opposite of all these statements would more accurately express the truth. Furthermore, the policies followed by the states, and even by states adjacent to each other, have been utterly wanting in consistency and uniformity, and often have been directly conflicting. State legislatures have passed most of the laws and state commissions have issued most of the orders affecting railway rates and operating expenses; and to them are fairly attrib-

utable most of the bad effects which railway regulation has had directly on the railways and indirectly on the welfare of the public. That this is the case will more clearly appear when we consider the policies which the states, on the one hand, and the national government, on the other, have followed.

#### *State Versus Federal Policies*

The states within the past four years have passed 442 laws for the regulation of the physical operation of railways. These have been supplemented by innumerable orders issued by state commissions. In one respect, and in one only, have most of these laws and orders been alike. Practically all have tended to increase railway expenses. A large part have been enacted to enable special classes of persons having large political influence to benefit directly by the increased expenditures made necessary. This has been true, for example, of the many so-called "full crew" laws which have been enacted, the real purpose of which has been to compel the railways to employ men they do not need.

The federal government has passed some laws tending to increase railway expenses. In some cases these have been enacted as the result of the pressure of interested classes. But there usually has been some justification for the federal laws which have been enacted. Furthermore, a federal law has the advantage that it applies uniformly throughout the country. Finally, the Interstate Commerce Commission, in the administration of statutes affecting operation, usually has been intelligent and fair. It may sometimes manifest a disposition to give undue consideration to the wishes of the labor organizations; but in the administration of the hours of service act, the safety appliance act, and the locomotive boiler inspection act, for example, it has usually given satisfaction to both the railway managements and the railway employees.

The policy of the states regarding the issuance of railway securities has been extremely unsatisfactory. For years most of them let railways issue bonds and stocks without any supervision or control. There has been much complaint regarding the over-capitalization of some roads. Most railway corporations have been created by the states and if the states had not failed to exercise proper control over their financial management the over-capitalization complained of could not have occurred. The states which

earliest began regulation of securities were Texas and Massachusetts. Texas imposed such severe restrictions that it has been impossible for its railways to finance their needs. Most of the new capital for lines in that state has had to be raised by the companies controlling them on the credit of their mileage in other states. Roads in Texas which have not been controlled and supported by outside companies have often been unable to get adequate capital for improvements and have become decrepit physically and in many cases bankrupt financially. Massachusetts provided that securities should not be sold at less than their market value, this to be determined by the railroad commission. The commission often decided that the market value was more than the securities could be sold for. In consequence, the railways found it difficult and in some cases impossible to raise needed capital, and the law had to be amended to provide that the prices at which securities should be sold should be determined by the stockholders with the approval of the commission.

The inconsistencies between the policies followed in different states is strikingly illustrated by the legislation in the adjacent states of Massachusetts and Connecticut. The Massachusetts law both required the issuance of securities to be approved by the railroad commission and specified the purposes for which they could be issued. Connecticut imposed no similar restrictions. The New York, New Haven & Hartford had charters from both states. The laws of Massachusetts, if they alone had controlled, would have prevented the "high financing" which was a main feature of the Mellen management of the road; but the laws of Connecticut permitted it. Therefore, it was carried on under the road's Connecticut charter regardless of the laws of Massachusetts.

New York, Wisconsin and some other states have within recent years passed strict laws for the regulation of the issuance of railway securities. But when a railway is required to be chartered under the laws of more than one state and to receive approval of security issues from more than one commission, the expenses and trouble incurred are needlessly multiplied and the subject is likely to be differently dealt with in different states. There is no reason for expecting or hoping that regulation of railway securities will ever be intelligently, fairly and beneficially conducted as long as it is left in the hands of forty-eight states.

It is a generally accepted principle that fairness to the railways and the welfare of the public require that the carriers be allowed to charge rates which will enable them to earn a reasonable profit on the investment honestly and judiciously made in their properties. If this is not done they cannot raise enough new capital to improve and enlarge their facilities and to render good and adequate service. There are few well-informed persons who believe that the net return earned by the railways as a whole has ever been positively excessive. The statistics of the Interstate Commerce Commission, some of which have been given herein, show that during the last decade their net return has been declining.

This decline has been due to the fact that their operating expenses and taxes have been rapidly increasing and that they have not been allowed to make needed advances in their rates. The Interstate Commerce Commission has required many extensive reductions in freight rates. The most important cases involving advances in rates have been heard by it. In the so-called "Five Per Cent Case" it expressly held, after thorough investigation, that the net earnings of the eastern lines were insufficient and granted some advances, but in earlier cases in both the east and the west it refused, after full hearings, to permit advances, and in a later western case it refused most of the advances for which the railways asked. Therefore, the commission has been the object of criticism by most people who have believed that the railways were entitled to higher rates.

But the fact is, that the Interstate Commerce Commission has been less one-sided in its regulation of rates than almost any state legislature or commission. In the years 1906 to 1908 a large number of states, by legislation or orders of their commissions, which usually were adopted without a pretense of investigation, required the railways to reduce their passenger fares from three to two cents a mile. Neither Congress nor the Interstate Commerce Commission has adopted any such regulation. Recently the Interstate Commerce Commission has indicated that it believes that two cents a mile is too low and has allowed the eastern railways to restore their interstate fares to two and one-half cents. The roads have appealed to the states to take similar action; but except in New England, their petitions have not been granted without appeals to the courts.

In 1906 and the years immediately following, numerous states, by legislation or the orders of commissions, and usually without any real investigation, required general reductions in freight rates. In many cases they made the state rates lower than the corresponding interstate rates. In more recent years the railways have appealed to the legislatures and commissions of many states for the restoration of some of these rates, presenting masses of data showing the downward tendency of net earnings. Some advances in state freight rates have been allowed, as in New England, Alabama, Michigan and Missouri; but in most states the public authorities have been hostile to any considerable increases.

Furthermore, many of the individual states try to so adjust the rates within their borders as to effect unfair discriminations in favor of shippers in their own states and against those in other states. The Interstate Commerce Commission in the Shreveport case attacked such an adjustment of rates which had been established by the Texas commission for the purpose of giving Texas shippers an advantage in certain markets in East Texas over shippers at Shreveport and other points in Louisiana. It held that the regulation of rates by the Texas commission was unreasonable and worked an unfair discrimination against interstate commerce, and the Supreme Court of the United States upheld this conclusion. The Interstate Commerce Commission has been trying ever since to remove the discrimination; but so pertinacious has the Texas commission been in its efforts to maintain the unfair advantage of the shippers of its state that the Railroad Commission of Louisiana very recently filed another complaint with the Interstate Commerce Commission regarding the policy of the Texas commission.

On the whole it must be conceded that the Interstate Commerce Commission's regulation of freight rates has been much more intelligent and fair, and, consequently, less one-sided, than that of most of the states. In fact, there are now in effect many state freight rates which are lower than the corresponding interstate freight rates, whereas, for reasons familiar to all students of the subject, state rates ought ordinarily to be higher than corresponding interstate rates.

Besides having been more fair as between the railways and the public, regulation of rates by the Interstate Commerce Commission has the advantage of being governed by national and not by local

influences and considerations. The unfairness of the attitude of most state commissions is illustrated by the fact that seven of them actually appeared in the Five Per Cent Case as parties in opposition to the proposed advances in freight rates in eastern territory, and that sixteen of them appeared as parties in opposition to the proposed advances in both freight and passenger rates in western territory.

#### *Conclusions Suggested and Changes in Regulation Needed*

The facts presented in the foregoing bring out clearly several points which are of much gravity and importance but which unfortunately are not generally understood. They show that the Interstate Commerce Commission cannot be held solely, or even perhaps mainly, responsible for the serious reduction of railway net earnings, so far as it is attributable to regulation, because the Commission has not done most of the regulating. The federal authority over interstate commerce is exclusive, at least when exercised, and is paramount to that of the states over state commerce. The facts show, however, that the Interstate Commerce Commission is exercising, and has been expressly empowered to exercise, practically no control over state regulation even when it affects interstate commerce and interstate regulation; while, on the other hand, state legislatures and commissions are so regulating state commerce as seriously to burden interstate commerce and to interfere with federal regulation. They show that in regulating rates many states are trying to further the interests of their own people at the expense of those of the rest of the nation. They show that in their regulation of operation the states are often influenced by political and other improper considerations; that the requirements they impose upon the railway are consistent only in increasing operating expenses; and that most of the increases in operating expenses they cause have to be borne not by state but by interstate commerce, since interstate traffic constitutes the great bulk of the total handled. They show that in the regulation of the issuance of securities the states have been entirely inconsistent; that they have been excessively negligent in some cases and excessively stringent in others. They show, if past experience is a safe criterion, that so long as the individual states are left free to take their own heads the regulations imposed by them will be utterly wanting in uniformity, and even directly conflicting.

The facts further show that the authority, even over interstate commerce, which has thus far been conferred on the Interstate Commerce Commission is incomplete and fragmentary. Its power over rates is merely the power to keep them from being made too high. It cannot keep them from being made too low even when this may be necessary to prevent unfair discrimination or to accomplish some other public purpose. It cannot authorize an agreement between competing railways regarding service or rates even though such an agreement would prevent unfair discrimination, reduce the cost of operation or result in improvement in the service. It has no part in the settlement of disputes between railways and their employees, although the way they are settled may have the most potent influence on the character and cost of the service rendered. It can regulate the physical management of the railways in only a few particulars, and it cannot directly regulate their financial management at all. The facts show, however, that with powers more limited than those of many state commissions, the Interstate Commerce Commission has done much less harm and a great deal more good than the regulating authorities of the states.

The conclusions to which these facts point are clear. Neither the Interstate Commerce Commission nor any other body should be held responsible for the results produced by any system which it cannot direct and control. The results produced by our system of railway regulation will never be satisfactory until that system is radically changed. As long as the states are allowed to regulate the railways without control by the federal government they are sure to continue to so regulate them as to impose burdens on interstate commerce and to interfere with federal regulation. But since our commerce among the states is vastly more important than that within the states, if the regulation of the one is to affect that of the other then the regulation of the larger and more important part of our commerce should be made supreme and controlling over the regulation of the smaller and less important part. The obvious way in which to do this is either to empower the Interstate Commerce Commission to regulate both state and interstate transportation or to so increase its authority over interstate transportation as to enable it to veto any action by state legislatures or commissions which will directly or indirectly burden interstate commerce or

interfere with interstate regulation. There is no question about the power of Congress to do this.

Besides being given authority to veto any state regulation which burdens and interferes with interstate commerce, the commission should be given positive as well as negative power—as much power to pursue a constructive as an obstructive policy. It should be empowered to fix minimum as well as maximum rates; to participate in the arbitration of labor disputes, the settlement of which may vitally affect the quality and the cost of the service; and to do such regulating of the physical management of railways as may be expedient, instead of such regulating being done by arbitrary laws often drafted by persons who do not understand the conditions to be dealt with and passed by legislators influenced by political motives. It should be empowered to authorize reasonable agreements between competing railways, and to exercise such control over the issuance of railway securities as will prevent the states from either turning loose predatory corporations to prey on the people of the entire country or from so restricting the financing of railways as to hamper their development; and as will at the same time prevent unscrupulous financiers from repeating such scandalous transactions as have occurred in the management of some roads.

The adoption of federal legislation for these and kindred purposes is essential to bring order out of the chaos which now reigns in our regulation of railways, and to change it to a system which will control without oppressing the railways and which will secure for the public the two vitally important things which the public desires regulation to secure, *viz.*, good and adequate service, and reasonable and non-discriminatory rates.

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## THE INTERSTATE COMMERCE COMMISSION AND THE RAILROADS

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No problem more important and difficult confronts the people of the United States than that of establishing between their governments and their large business concerns relations which will promote greater equality in the distribution of the burdens and benefits of the production of wealth, without impairing the efficiency with which production is conducted. There has been within recent years a great increase in the amount of government regulation of business. Its main purpose has been to equalize economic burdens and benefits. The most important experiment being made in this field is in the control of railroads. This experiment is so important partly because the railway industry is one of the largest in the country. It is so important partly, also, because there is a tendency for large classes of commercial and industrial enterprises to pass mainly into the hands of a comparatively few large aggregations of capital. This tendency, if continued, will give quasi-monopolistic power to a few concerns in these other fields. There will then be as much reason for subjecting them to strict regulation as for subjecting railways to it. The policy applied to them probably would be modeled on that applied to railways, having alike its strength and its weaknesses. Therefore, the wisdom or folly of our regulation of railways may determine the wisdom or folly of our regulation of other classes of concerns and the success or failure of government control of business in many fields.

The system of regulation adopted for railways consists partly of the passage of laws imposing on them specific and detailed requirements, but mainly of the delegation of authority over them to commissions. The Interstate Commerce Commission is the most important body to which such authority has been given. Therefore, the success or failure of government regulation of railways, and even of public regulation of business in general, will be determined largely by the amount and nature of the power given to the commission

and by the courage and wisdom with which it is exercised. An adequate study of its authority, of the way it is doing its work, of the results being produced, and of the changes, if any, which ought to be made in the laws defining its authority and duties, or in the policy which it is following, would occupy an important place in an investigation and discussion of the relations between our governments and our commerce and industry. Limitations of space forbid, however, the presentation in this article of more than an outline of the points that should be covered in a comprehensive discussion of the relations between the commission and the railways.

### *Some Results of Regulation*

Regulation of the railways by the federal government began with the passage of the Act to Regulate Commerce in 1887. Their regulation by the states began with the Granger movement more than a decade earlier, and in some states has been effective and even drastic most of the time since. But effective regulation throughout the country, both national and state, did not begin until 1906, when the Hepburn rate act was passed. It has, therefore, had a life of less than ten years.

As a preliminary to analysis and discussion of the policy followed since 1906, it is desirable to take a general survey of the trend of affairs in the railway industry during this time. It is easy to show that regulation in general, since it became effective, has accomplished much good. It has destroyed the railways' domination of politics. It has abolished the issuance of free passes except to certain classes of persons who are expressly authorized by law to use them. It has extirpated rebating and greatly reduced unfair discriminations in the published rates. It has caused the adoption of a uniform system of accounting which has made it more difficult for those in charge of the management of railways to evade public control or deceive or overreach their stockholders. It has given so much publicity to the mismanagement, financial and otherwise, of certain roads as to render such mismanagement more difficult and improbable in future. This is but a partial list of the good results it has achieved.

At the same time, regulation has produced, or contributed toward producing, other effects more questionable. In the decade before 1906, without there being any considerable advances in av-

verage freight and passenger rates, the earnings of the railways increased more rapidly than their operating expenses and taxes. There were, in consequence, large increases in their net income, which enabled them to recover from the effects of the panic of 1893 and of the depression which followed it; and a large amount of new mileage was built and unprecedented numbers of locomotives and cars were bought.

On the other hand, during the period since 1906, despite great improvements in machinery and methods of operation, the expenses and taxes of the railways have increased faster than their total earnings. They have found it necessary year by year to make large additions to their investment in property per mile of line. This coincidence of increasing investment and declining net revenue has caused a serious reduction in the percentage of return earned. In the fiscal year ended June 30, 1914, the last year for which we have complete figures, the investment in road and equipment per mile of line was \$71,551, an increase since 1906 of \$11,927. Gross earnings per mile were \$12,667, an increase of \$2,207, or 21 per cent. Operating expenses and taxes were \$9,794, an increase of \$2,546, or 35 per cent. In consequence, net operating income per mile was only \$2,873, or \$339 less than in 1906, a reduction of  $10\frac{1}{2}$  per cent. To summarize, the investment per mile was \$11,927 more in 1914 than eight years before, but the net money per mile available with which to pay a return on it was \$339 less. In 1906 the percentage of net return on property investment was 5.39 per cent; in 1914, only 3.99 per cent.

This decline in net return has rendered it increasingly difficult to pay interest and dividends and raise new capital. Many roads have become bankrupt and on October 1, 1915, 42,000 miles of line were in the hands of receivers. This is the largest mileage of insolvent roads ever known. The construction of new mileage under way is less than at any time in fifty years. Until lately the orders placed for equipment and supplies were at their lowest ebb. These conditions threw hundreds of thousands of the workmen of the railways and of railway supply and equipment manufacturing concerns out of employment.

The increase in the outgo of the railways between 1906 and 1914 was due chiefly to two causes. The average wage per employee advanced from \$611 to \$810, or 32.57 per cent. The taxes per mile

advanced from \$336 to \$568, or 69 per cent. The increases in taxes were, of course, made by public authorities. A large majority of the advances in wages were awarded by arbitration boards organized under the federal Erdman act. There have been other, although smaller, increases in expenses which have been more directly due to state and federal regulation. The railways have tried to make general advances in rates to offset, at least partially, these increases in their outgo. The regulating authorities, national and state, have prevented most of these and have caused many reductions in both passenger and freight rates, and the average passenger and freight rates are lower now than in 1906, despite the great increases which have occurred in wages, taxes and other expenses.

On this showing the heavy reduction in the net return of the railways and the effects which it has produced must be attributed mainly to government regulation. As the Interstate Commerce commission is the most important regulating body, many people give it the credit or blame, commending it if they regard the general result produced as good and condemning it if they consider it bad. It is probable that a majority of business men and students of economic and industrial affairs believe the reduction of railway net earnings has been unjustified and has had a bad effect on business generally. Therefore, among these classes the Interstate Commerce Commission is a less popular and more criticized body than a few years ago.

But much of the criticism visited on it is misdirected. The commission is often called the most powerful governmental body in the United States. In a sense, it is so. It has large authority over the railway industry, which involves the possession of great power to affect the national welfare. But an examination of the laws and court decisions under which the commission acts shows that its authority, while great, is fragmentary and subject to many limitations; that it is more negative than positive; that it is such that the harm which the commission can do if disposed to be unfair is greater than the good it can do if disposed to be fair. Before judgment is passed on the commission's work, the nature and limitations of its authority should be carefully considered.

#### *Piecemeal Development of Public Control*

In theory, regulation should, and in practice in this country it does, relate to the financing of railways; to their construction,

maintenance and operation; to their accounting; and to their rate-making. As financing must precede construction, and as construction, maintenance and operation must precede accounting and rate-making, logically, regulation should be applied to these features of the business in the order they are named. In France, where logic usually counts for more and opportunism for less in public affairs than in English-speaking countries, this is almost exactly what was done. But in the United States, and much the same thing is true in England, regulation has been applied to one, and then to another, part of the business as there have come to the notice of the public and its representatives real or supposed abuses which have seemed to require correction.

How our system of regulation has grown up is illustrated by the way in which from time to time its powers have been conferred on the Interstate Commerce Commission. As already stated, the act to regulate commerce went into effect in 1887. There had been prolonged, widespread and well-founded complaints of rebating and other forms of unfair discrimination in rates, and the law was passed mainly to abolish these practices. It prohibited rebating and other forms of unfair discrimination, and forbade rates to exceed reasonable maxima. There was apprehension lest the pools of traffic and earnings which had been formed by various groups of competing lines would cause rates to be made and kept excessive, and therefore pooling also was prohibited. The Interstate Commerce Commission was created to enforce these provisions. It understood it was authorized to prescribe and put into effect maximum reasonable rates; but the Supreme Court of the United States held otherwise.

During the twenty years following the creation of the commission the question of rates, and especially the rebating phase of it, continued to absorb public attention; and regulation, state and national, dealt mainly with this question. Several minor amendments to the Interstate Commerce law, all dealing with rate matters, were passed, and in 1903 the Elkins law was enacted, strengthening the provisions against rebating. In 1906 was passed the Hepburn act, specifically authorizing the commission, when it found rates unreasonable, to fix maximum reasonable rates. In 1910 was passed the Mann-Elkins law, empowering the commission to suspend advances in rates pending investigation of them and to pro-

hibit them if found unreasonable. Meantime, in 1890, there had been enacted the Sherman Anti-Trust law. Originally assumed to have no application to railways, this law was soon construed by the courts to prohibit all agreements and combinations between competing carriers.

Gradually the attention of the public and its representatives began to be directed toward other phases of the railway business. The Hepburn act authorized the Interstate Commerce Commission to prescribe a uniform system of accounting. This the commission did, and many states followed its example.

As early as 1893 Congress had begun the physical regulation of railways by passing the Safety Appliance acts, requiring the use of power brakes and automatic couplers. The Erdman law of 1898, providing a scheme of conciliation and arbitration of disputes between railways and their employees in train service, was intended as a regulation of operation, its principal purpose being to prevent interruptions of service by strikes. After being long ignored, this statute, now in amended and strengthened form known as the Newlands act, has in recent years often been resorted to with important results.

Within the last ten years, federal laws affecting the physical equipment and operation of railways have followed each other in rapid succession. In 1907 an act was passed limiting the hours of service of railway employees. In 1908 the kind of ashpans to be used on locomotives was prescribed. In 1909 the transportation of explosives was dealt with. In 1910 the present Employers' Liability act applying to interstate carriers, was enacted, and provisions were adopted affecting all safety appliances used on locomotives and cars. Still later there was passed an act for the inspection of locomotive boilers, which, at the last session of Congress, was made to cover the entire locomotive. The Interstate Commerce Commission has nothing to do with the arbitration of labor disputes, but is required to administer and enforce most of the federal laws affecting operation.

The example set by Congress during the last ten years in passing laws relating to physical equipment and operation has not only been followed but greatly surpassed by most of the states. During the last five years the states have adopted no less than 442 laws relating merely to the physical operation of railways; and in numer-

ous cases the legislatures and commissions have regulated features of the business which Congress has not touched or authorized the Interstate Commerce Commission to deal with.

*Limitations on the Commission's Authority*

The foregoing shows that, as already has been stated, the Interstate Commerce Commission's power is fragmentary. Its authority even over the phases of the railway business with which it does deal is restricted in various ways. Its authority over rates is great, but far from unlimited. The extent of its power over state rates is unsettled. In the Shreveport case it was held that, if a state rate prescribed by a state authority was so low compared with a related interstate rate as to be unfairly discriminatory against interstate commerce, the Commission could compel the railways to remove the discrimination even though this involved the advance of the state rate. But it is conceivable that a state rate fixed by a state commission or legislature may be too low as compared with interstate rates approved by the Interstate Commerce Commission, and yet not be so related to the interstate rates as to work directly, at least, an unfair discrimination. What control, in that case, can the Commission exercise over the state rate? The courts will not interfere with either interstate or state rates merely because they are low unless they are actually confiscatory. How much it may be reasonable and expedient for rates to be kept above the line of confiscation is a question of public policy to be determined by law-making bodies and commissions. Suppose, now, that the courts should hold that rates which would yield a return of 6 per cent on a fair valuation barely avoided confiscation and that state authorities should then fix rates which would yield only 6 per cent on state traffic, but that the Interstate Commerce Commission should believe a more liberal policy was desirable, in order to induce sufficient investment in railways, and should allow rates which would yield 7 or 8 per cent. This is practically what is really being done in many cases, except that the rates of return allowed to be earned do not average as much as those mentioned. There are many instances where state legislatures and commissions are enforcing lower passenger and freight rates than the federal commission is allowing to be charged on interstate traffic in the same states.

In its decision in the last western rate advance case the Inter-

state Commerce Commission refused to permit increases in certain interstate freight rates, not because they would not be reasonable in themselves, but because the interstate rates already being applied were higher than the corresponding state rates. The attorneys for the railways contend that it was within the competence of the federal commission, first, to fix reasonable interstate rates, and then to require the state authorities to permit the collection of corresponding state rates. Does the failure of the Interstate Commerce Commission to adopt this course indicate a belief that it lacks the necessary authority? If it does lack the authority in such cases to bring state rates into line with interstate its power to prevent unfair discriminations against interstate commerce and to carry out a fair policy of regulation is limited in a very important respect.

The commission's authority over even interstate rates is restricted in a vital particular. Many state commissions may fix the absolute rates which must be charged, and the railways can neither advance nor reduce them. The Interstate Commerce Commission may prescribe reasonable *maximum* rates and prohibit unreasonable *advances*, but it cannot fix reasonable *minimum* rates or prevent unreasonable *reductions*. Suppose the commission prescribes for a certain territory a schedule of rates which it holds to be reasonable and non-discriminatory. All the railways in the territory but one may accept it. This one may choose to make a reduction at one point which will cause an unfair discrimination. The commission, in such a case, is powerless to prevent the reduction and the consequent discrimination. Suppose, again, that the railways in a territory show they are not deriving from all their rates enough net revenues to enable them to serve the public properly. At the same time they suggest advances in the rates on certain commodities. The commission may believe that the needed revenues should be secured by increasing the rates on a different group of commodities; but it cannot deal fairly or adequately with the situation because, while it can refuse the advances for which the railways ask, it cannot cause the advances which it thinks ought to be made.

The competition between the railways in making rates often becomes so excessive as to result in unfair discriminations. Existing laws prohibit agreements or arrangements between them to limit competition in interstate commerce. If the pooling of traffic or of earnings were allowed, as is done in almost every other country,

roads which desire to keep rates reasonable and non-discriminatory could offer inducements to their rivals to do so. But pooling is prohibited by the Act to Regulate Commerce, and other kinds of agreements and arrangements limiting competition are prohibited by the Sherman law. In many cases it would help the Interstate Commerce Commission in its regulation of rates if groups of railways would enter into pooling or other arrangements to restrict competition and prevent discriminations; but the commission cannot even authorize, much less require, them to do so.

The commission's authority over the way railways shall be constructed, maintained and operated is much more limited than its authority over rate-making. In numerous states the commissions, by general provisions of law, have been given extensive discretionary control over the physical management of railways. In some states, by declining to issue "certificates of public convenience," they can even prevent new lines from being built at all. In many they can order the construction and control the location of passenger and freight stations, prescribe the headlights that shall be used, require the installation of block signals, and regulate the furnishing of freight cars and the schedules of passenger trains. The authority over physical management given to such commissions is, as already shown, supplemented by hundreds of state laws regulating details of construction, maintenance and operation. On the other hand, the legislation enacted by Congress regarding physical management and operation is of a piecemeal nature. While the Interstate Commerce Commission prescribes the safety appliances used on locomotives and cars, it has nothing to say about block signals. It inspects and regulates locomotive boilers, but has no authority to regulate roadway and track. It may require the establishment of satisfactory through routes, but cannot interfere with an attempt by a lockout or a strike to interrupt transportation and close all routes. It has no part in the settlement of labor disputes, which may have the greatest influence on the kind of service that will be rendered and on the cost of rendering it. When state legislatures and commissions, in the nominal regulation of state commerce, impose on the railways requirements as to headlights, train crews and clearances, which affect interstate more than state commerce, the Interstate Commerce Commission cannot interfere; it has no authority over such matters.

Comparatively limited as is the commission's power over the physical management of railways, its authority over their financial management is still more restricted. Practically all railways are engaged in interstate commerce. Investors in them are scattered throughout the country. Yet, while many states regulate the issuance of railway securities, the Interstate Commerce Commission is without authority over this part of the railway business.

The facts presented in the foregoing portray an anomalous situation. The railway question is emphatically a national one. Most railways operate in more than one state and many lines in six, eight or a dozen. A vast majority of the traffic handled is interstate. There is no state in which the state traffic approaches the interstate in amount, and in some the interstate traffic is 90 per cent or more of the total. The Constitution, by repeated interpretations of the courts, makes the federal authority to regulate interstate commerce paramount to the state authority to regulate state commerce. The desirability of the assertion and exercise by the federal government of its paramount authority over commerce usually is recognized by the public with great promptness and clearness. Nobody would seriously consider a proposal to let each state deal separately with the tariff question, imposing duties that would affect both interstate and foreign commerce. The federal government exercises exclusive authority in the regulation of commerce on navigable waterways. A few years ago Mr. William J. Bryan advocated the adoption of government ownership of railways, and suggested that the national government should operate the main lines and the states the branch lines. The storm of opposition and ridicule which greeted this proposal was due not only to strong public sentiment against government ownership, but to a general recognition of the fact that the railway question was distinctly a national one; that the doctrine of state's rights in its correct form had little to do with it; and that it was absurd to suggest the operation of parts of the railways by the federal government and parts by the states.

Yet, in regulating railways we are following the very kind of policy the pursuit of which in dealing with the tariff or in the public ownership and operation of railways we would consider undesirable and absurd. We have partially asserted the paramount authority of the federal government over railway transportation by passing a number of national laws and creating the Interstate Commerce

Commission to administer most of them. But, as has been shown, the national commission has not nearly as much authority over interstate transportation as many state commissions have over state transportation; and state legislatures are allowed to pass laws and state commissions to issue orders which purport to affect merely state transportation but which actually interfere with interstate regulation and have a greater total effect on commerce among the states than on commerce within the state.

#### *Comparative Effects of State and Federal Regulation*

The present system cannot be defended on the ground that state regulation gets better results than interstate regulation. The national government, and especially the work done by the Interstate Commerce Commission, deserves credit for most of what is unquestionably good that has been accomplished. On the other hand, most of the questionable or positively bad results of regulation cannot be attributed to the federal government.

The fact that it is necessary to discuss where the credit should be given and the blame placed for results points to one of the serious faults of the present policy. This is the division of the responsibility for it. Where responsibility is so much divided it is impossible to apportion with exact, or even substantial justice the credit and the blame for what is done. But the policies of most of the states have been of such a character and present so great a contrast to that of the national government, in many respects, that it is possible to mete out a rough kind of justice.

In a few states, among which Wisconsin ranks first, most of the regulatory legislation has been intelligently and fairly drafted; the members of the commissions have been chosen because of their special fitness, and have not allowed political or other improper influences to control them; and regulation has, in consequence, been fair and beneficial to both the railways and the public. But as to most states the opposite of all these statements would more accurately express the truth. Furthermore, the policies followed by the states, and even by states adjacent to each other, have been utterly wanting in consistency and uniformity, and often have been directly conflicting. State legislatures have passed most of the laws and state commissions have issued most of the orders affecting railway rates and operating expenses; and to them are fairly attrib-

utable most of the bad effects which railway regulation has had directly on the railways and indirectly on the welfare of the public. That this is the case will more clearly appear when we consider the policies which the states, on the one hand, and the national government, on the other, have followed.

#### *State Versus Federal Policies*

The states within the past four years have passed 442 laws for the regulation of the physical operation of railways. These have been supplemented by innumerable orders issued by state commissions. In one respect, and in one only, have most of these laws and orders been alike. Practically all have tended to increase railway expenses. A large part have been enacted to enable special classes of persons having large political influence to benefit directly by the increased expenditures made necessary. This has been true, for example, of the many so-called "full crew" laws which have been enacted, the real purpose of which has been to compel the railways to employ men they do not need.

The federal government has passed some laws tending to increase railway expenses. In some cases these have been enacted as the result of the pressure of interested classes. But there usually has been some justification for the federal laws which have been enacted. Furthermore, a federal law has the advantage that it applies uniformly throughout the country. Finally, the Interstate Commerce Commission, in the administration of statutes affecting operation, usually has been intelligent and fair. It may sometimes manifest a disposition to give undue consideration to the wishes of the labor organizations; but in the administration of the hours of service act, the safety appliance act, and the locomotive boiler inspection act, for example, it has usually given satisfaction to both the railway managements and the railway employees.

The policy of the states regarding the issuance of railway securities has been extremely unsatisfactory. For years most of them let railways issue bonds and stocks without any supervision or control. There has been much complaint regarding the over-capitalization of some roads. Most railway corporations have been created by the states and if the states had not failed to exercise proper control over their financial management the over-capitalization complained of could not have occurred. The states which

earliest began regulation of securities were Texas and Massachusetts. Texas imposed such severe restrictions that it has been impossible for its railways to finance their needs. Most of the new capital for lines in that state has had to be raised by the companies controlling them on the credit of their mileage in other states. Roads in Texas which have not been controlled and supported by outside companies have often been unable to get adequate capital for improvements and have become decrepit physically and in many cases bankrupt financially. Massachusetts provided that securities should not be sold at less than their market value, this to be determined by the railroad commission. The commission often decided that the market value was more than the securities could be sold for. In consequence, the railways found it difficult and in some cases impossible to raise needed capital, and the law had to be amended to provide that the prices at which securities should be sold should be determined by the stockholders with the approval of the commission.

The inconsistencies between the policies followed in different states is strikingly illustrated by the legislation in the adjacent states of Massachusetts and Connecticut. The Massachusetts law both required the issuance of securities to be approved by the railroad commission and specified the purposes for which they could be issued. Connecticut imposed no similar restrictions. The New York, New Haven & Hartford had charters from both states. The laws of Massachusetts, if they alone had controlled, would have prevented the "high financing" which was a main feature of the Mellen management of the road; but the laws of Connecticut permitted it. Therefore, it was carried on under the road's Connecticut charter regardless of the laws of Massachusetts.

New York, Wisconsin and some other states have within recent years passed strict laws for the regulation of the issuance of railway securities. But when a railway is required to be chartered under the laws of more than one state and to receive approval of security issues from more than one commission, the expenses and trouble incurred are needlessly multiplied and the subject is likely to be differently dealt with in different states. There is no reason for expecting or hoping that regulation of railway securities will ever be intelligently, fairly and beneficially conducted as long as it is left in the hands of forty-eight states.

It is a generally accepted principle that fairness to the railways and the welfare of the public require that the carriers be allowed to charge rates which will enable them to earn a reasonable profit on the investment honestly and judiciously made in their properties. If this is not done they cannot raise enough new capital to improve and enlarge their facilities and to render good and adequate service. There are few well-informed persons who believe that the net return earned by the railways as a whole has ever been positively excessive. The statistics of the Interstate Commerce Commission, some of which have been given herein, show that during the last decade their net return has been declining.

This decline has been due to the fact that their operating expenses and taxes have been rapidly increasing and that they have not been allowed to make needed advances in their rates. The Interstate Commerce Commission has required many extensive reductions in freight rates. The most important cases involving advances in rates have been heard by it. In the so-called "Five Per Cent Case" it expressly held, after thorough investigation, that the net earnings of the eastern lines were insufficient and granted some advances, but in earlier cases in both the east and the west it refused, after full hearings, to permit advances, and in a later western case it refused most of the advances for which the railways asked. Therefore, the commission has been the object of criticism by most people who have believed that the railways were entitled to higher rates.

But the fact is, that the Interstate Commerce Commission has been less one-sided in its regulation of rates than almost any state legislature or commission. In the years 1906 to 1908 a large number of states, by legislation or orders of their commissions, which usually were adopted without a pretense of investigation, required the railways to reduce their passenger fares from three to two cents a mile. Neither Congress nor the Interstate Commerce Commission has adopted any such regulation. Recently the Interstate Commerce Commission has indicated that it believes that two cents a mile is too low and has allowed the eastern railways to restore their interstate fares to two and one-half cents. The roads have appealed to the states to take similar action; but except in New England, their petitions have not been granted without appeals to the courts.

In 1906 and the years immediately following, numerous states, by legislation or the orders of commissions, and usually without any real investigation, required general reductions in freight rates. In many cases they made the state rates lower than the corresponding interstate rates. In more recent years the railways have appealed to the legislatures and commissions of many states for the restoration of some of these rates, presenting masses of data showing the downward tendency of net earnings. Some advances in state freight rates have been allowed, as in New England, Alabama, Michigan and Missouri; but in most states the public authorities have been hostile to any considerable increases.

Furthermore, many of the individual states try to so adjust the rates within their borders as to effect unfair discriminations in favor of shippers in their own states and against those in other states. The Interstate Commerce Commission in the Shreveport case attacked such an adjustment of rates which had been established by the Texas commission for the purpose of giving Texas shippers an advantage in certain markets in East Texas over shippers at Shreveport and other points in Louisiana. It held that the regulation of rates by the Texas commission was unreasonable and worked an unfair discrimination against interstate commerce, and the Supreme Court of the United States upheld this conclusion. The Interstate Commerce Commission has been trying ever since to remove the discrimination; but so pertinacious has the Texas commission been in its efforts to maintain the unfair advantage of the shippers of its state that the Railroad Commission of Louisiana very recently filed another complaint with the Interstate Commerce Commission regarding the policy of the Texas commission.

On the whole it must be conceded that the Interstate Commerce Commission's regulation of freight rates has been much more intelligent and fair, and, consequently, less one-sided, than that of most of the states. In fact, there are now in effect many state freight rates which are lower than the corresponding interstate freight rates, whereas, for reasons familiar to all students of the subject, state rates ought ordinarily to be higher than corresponding interstate rates.

Besides having been more fair as between the railways and the public, regulation of rates by the Interstate Commerce Commission has the advantage of being governed by national and not by local

influences and considerations. The unfairness of the attitude of most state commissions is illustrated by the fact that seven of them actually appeared in the Five Per Cent Case as parties in opposition to the proposed advances in freight rates in eastern territory, and that sixteen of them appeared as parties in opposition to the proposed advances in both freight and passenger rates in western territory.

#### *Conclusions Suggested and Changes in Regulation Needed*

The facts presented in the foregoing bring out clearly several points which are of much gravity and importance but which unfortunately are not generally understood. They show that the Interstate Commerce Commission cannot be held solely, or even perhaps mainly, responsible for the serious reduction of railway net earnings, so far as it is attributable to regulation, because the Commission has not done most of the regulating. The federal authority over interstate commerce is exclusive, at least when exercised, and is paramount to that of the states over state commerce. The facts show, however, that the Interstate Commerce Commission is exercising, and has been expressly empowered to exercise, practically no control over state regulation even when it affects interstate commerce and interstate regulation; while, on the other hand, state legislatures and commissions are so regulating state commerce as seriously to burden interstate commerce and to interfere with federal regulation. They show that in regulating rates many states are trying to further the interests of their own people at the expense of those of the rest of the nation. They show that in their regulation of operation the states are often influenced by political and other improper considerations; that the requirements they impose upon the railway are consistent only in increasing operating expenses; and that most of the increases in operating expenses they cause have to be borne not by state but by interstate commerce, since interstate traffic constitutes the great bulk of the total handled. They show that in the regulation of the issuance of securities the states have been entirely inconsistent; that they have been excessively negligent in some cases and excessively stringent in others. They show, if past experience is a safe criterion, that so long as the individual states are left free to take their own heads the regulations imposed by them will be utterly wanting in uniformity, and even directly conflicting.

The facts further show that the authority, even over interstate commerce, which has thus far been conferred on the Interstate Commerce Commission is incomplete and fragmentary. Its power over rates is merely the power to keep them from being made too high. It cannot keep them from being made too low even when this may be necessary to prevent unfair discrimination or to accomplish some other public purpose. It cannot authorize an agreement between competing railways regarding service or rates even though such an agreement would prevent unfair discrimination, reduce the cost of operation or result in improvement in the service. It has no part in the settlement of disputes between railways and their employees, although the way they are settled may have the most potent influence on the character and cost of the service rendered. It can regulate the physical management of the railways in only a few particulars, and it cannot directly regulate their financial management at all. The facts show, however, that with powers more limited than those of many state commissions, the Interstate Commerce Commission has done much less harm and a great deal more good than the regulating authorities of the states.

The conclusions to which these facts point are clear. Neither the Interstate Commerce Commission nor any other body should be held responsible for the results produced by any system which it cannot direct and control. The results produced by our system of railway regulation will never be satisfactory until that system is radically changed. As long as the states are allowed to regulate the railways without control by the federal government they are sure to continue to so regulate them as to impose burdens on interstate commerce and to interfere with federal regulation. But since our commerce among the states is vastly more important than that within the states, if the regulation of the one is to affect that of the other then the regulation of the larger and more important part of our commerce should be made supreme and controlling over the regulation of the smaller and less important part. The obvious way in which to do this is either to empower the Interstate Commerce Commission to regulate both state and interstate transportation or to so increase its authority over interstate transportation as to enable it to veto any action by state legislatures or commissions which will directly or indirectly burden interstate commerce or

interfere with interstate regulation. There is no question about the power of Congress to do this.

Besides being given authority to veto any state regulation which burdens and interferes with interstate commerce, the commission should be given positive as well as negative power—as much power to pursue a constructive as an obstructive policy. It should be empowered to fix minimum as well as maximum rates; to participate in the arbitration of labor disputes, the settlement of which may vitally affect the quality and the cost of the service; and to do such regulating of the physical management of railways as may be expedient, instead of such regulating being done by arbitrary laws often drafted by persons who do not understand the conditions to be dealt with and passed by legislators influenced by political motives. It should be empowered to authorize reasonable agreements between competing railways, and to exercise such control over the issuance of railway securities as will prevent the states from either turning loose predatory corporations to prey on the people of the entire country or from so restricting the financing of railways as to hamper their development; and as will at the same time prevent unscrupulous financiers from repeating such scandalous transactions as have occurred in the management of some roads.

The adoption of federal legislation for these and kindred purposes is essential to bring order out of the chaos which now reigns in our regulation of railways, and to change it to a system which will control without oppressing the railways and which will secure for the public the two vitally important things which the public desires regulation to secure, *viz.*, good and adequate service, and reasonable and non-discriminatory rates.